

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

<b>LUCIOUS HARDING,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>No. 1:15-cv-11233</b>
<b>v.</b>	)	
	)	
<b>M&amp;M LOGISTICS, INC., and EARVING COLE</b>	)	<b>Judge John Z. Lee</b>
	)	
<b>Defendants.</b>	)	
	)	

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**PLAINTIFF LUCIOUS HARDING’S MOTION FOR LEAVE TO FILE  
FIRST AMENDED COMPLAINT *INSTANTER***

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Plaintiff, Lucious Harding, by and through his attorneys, in accordance with the Court’s August 16, 2016 Order (Doc. No. 78) and pursuant to Federal Rule of Civil Procedure 15(a)(2), hereby requests leave of court to file his First Amended Complaint *Instanter*, adding M&M Logistics Brokerage, Inc. as a defendant:

1. This case involves a rear-end multiple vehicle car crash on February 24, 2015, caused by the Defendant Earving Cole who failed to stop his semi-tractor and trailer in time to avoid the collision causing severe bodily injury to five (5) individuals who were passengers in the three (3) cars he struck.

2. On November 17, 2015, Plaintiff filed a Complaint against Defendants Earving Cole and M&M Logistics, Inc. in Illinois state court.

3. On December 14, 2015, Defendants removed the case to Federal Court. (Doc. No. 1).

4. Defendants have answered written discovery and the deposition of Mr. Cole is scheduled to occur August 30, 2016 in Arkansas.

5. The Illinois statute of limitations applicable to this bodily injury claim is two years and thus does not expire until February 24, 2017, approximately six (6) months from now.

6. Additionally, this Court has not ordered a deadline by which Plaintiff is obligated to join additional parties to the lawsuit.

7. Federal Rule of Civil Procedure 15(a)(2) provides that the “court should freely give leave when justice so requires.”

8. Plaintiff has a good-faith basis to believe that in addition to Defendants Earving Cole and M&M Logistics, Inc., there is another party liable for Plaintiff’s injuries, namely, M&M Logistics Brokerage, Inc.

9. Evidence shows that M&M Logistics Brokerage, Inc. is the alter-ego of M&M Logistics Inc. and hence, they share liability for the admitted negligence of Mr. Cole in causing the crash.

10. According to the Defendants, they “ceased M&M Logistic Inc.’s operations because the insurance policy expired. Without insurance, the company was no longer able to operate.” (Defendant M&M Logistics’ Answer to Plaintiff’s Supplemental Interrogatory No. 14, Exhibit 1). M&M Logistics then allegedly dissolved.

11. However, and peculiarly, upon information and belief, at the time of the alleged dissolution M&M Logistics had annual revenue of approximately \$4,352,437 to \$4,400,000. (Business Description, Exhibit 2).

12. Evidence discovered to date indicates that M&M Logistics still has assets, and that M&M Logistics Brokerage is, and always has been, the alter-ego of M&M Logistics. For example:

- a. M&M Logistics and M&M Logistics Brokerage had and/or have common management and supervision.
- b. Carl Warren is the President, Founder and Registered Agent of M&M Logistics.
- c. Carl Warren is also the President, Founder and Registered Agent of M&M Logistics Brokerage.
- d. Mr. Cole called Mr. Warren after the accident. (M&M Logistics Answers to Plaintiff's Interrogatory No. 18, Exh. 3).
- e. Carl Warren's wife, Karri Dawn Warren, is the Vice-President of M&M Logistics.
- f. Carl Warren's wife, Karri Dawn Warren, is also the Incorporator/Organizer of M&M Logistics Brokerage.
- g. M&M Logistics and M&M Logistics Brokerage share and/or shared the same single office and premises in a small town in Arkansas.
- h. M&M Logistics' office is 203 Avenue 63 NE, Atkins, Arkansas 72823.

- i. M&M Logistics Brokerage's office is 203 Avenue 6 NE, Atkins, Arkansas 72823.
- j. M&M Logistics and M&M Logistics Brokerage have the same office phone number: (479) 641-1968.
- k. Upon information and belief, M&M Logistics and M&M Logistics Brokerage were operating under the same Motor Carrier ("MC") number: MC 703978 (Group Exhibit 4), yet Carl Warren claims the M&M Logistics and M&M Logistics Brokerage never shared the same MC 703978. (Warren Affidavit ¶¶4,6, Doc. No. 70).
- l. M&M Logistics and M&M Logistics Brokerage share and/or shared the same or at least the substantially identical business purpose and operations in the trucking industry.
- m. Carl Warren claims that the business of M&M Logistics was strictly to haul freight as a trucking company and he claims the business of M&M Logistics Brokerage is to arrange for deliveries of other trucking companies. (Warren Affidavit ¶¶4,6, Doc. No. 70). Yet, M&M Logistics represented to the Secretary of State for the State of Arkansas at the time it filed its Articles of Incorporation that "the primary purpose of the Corporation shall be" "FREIGHT BROKERAGE" - not strictly a trucking company as Carl Warren now claims in this lawsuit. (Exhibit A to Warren Affidavit, Doc. No. 70-1, p. 3 of 8).

- n. Upon information and belief, M&M Logistics and M&M Logistics Brokerage share the same accountant and payroll services.
- o. M&M Logistics and M&M Logistics Brokerage share and/or shared equipment and materials necessary to operate the common trucking business.
- p. M&M Logistics owns the premises out of which M&M Logistics and M&M Logistics Brokerage do their joint business.
- q. Despite allegedly being dissolved, M&M Logistics and M&M Logistics Brokerage have an active lease agreement through January 1, 2019.
- r. M&M Logistics Brokerage pays M&M Logistics \$600 per week for the shared office space and shared equipment necessary to operate the joint business.
- s. M&M Logistics provided M&M Logistics Brokerage all desk, chairs, computers, printers, phones and necessary supplies. (Exh. C to Warren Affidavit, Doc. No. 70-3).
- t. M&M Logistics insures the office and all of M&M Logistics Brokerage's office equipment and contents within the office.
- u. M&M Logistics Brokerage brokered and arranged loads for M&M Logistics at least thirty-nine (39) different times. (Warren Affidavit ¶9, Doc. No. 70).

WHEREFORE, Plaintiff, Lucious Harding, respectfully requests that this Honorable Court enter an order granting him leave of court to file his First Amended Complaint *Instantly*. The proposed First Amended Complaint is attached hereto as Exhibit 5.

Respectfully submitted,

Hart McLaughlin and Eldridge, LLC

By: /s/ Robert J. McLaughlin  
One of the Attorneys for  
Plaintiff Lucious Harding

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